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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Implementation of Sections of the)
Cable Television Consumer)
Protection and Competition Act of)
1992: Rate Regulation)

MM Docket 92-266

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JUN 29 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Commission

COMMENTS OF LIFETIME TELEVISION

Philip V. Permut
Peter D. Ross
Rosemary C. Harold

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

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Its Attorneys

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SUMMARY

Lifetime Television ("Lifetime") urges the Commission to modify certain aspects of its rate regulations that undermine the ability of advertiser-supported program services to continue to provide the viewing public with popular quality programming for a low fee. The Commission's going-forward methodology, in particular, must be enhanced in a way that corrects existing disincentives for operators to retain existing, low fee services on a broad regulated tier. Lifetime also urges the Commission to reconsider certain procedural issues that pose a significant threat to continued and increased financial support for already carried program services. Lifetime specifically urges the Commission to take the following corrective action:

- (1) Adopt a flat fee mark-up that encourages operators to add, and not merely substitute, channels on regulated tiers of service;
- (2) Ensure operators at least a minimum mark-up on license fee increases for all program services;
- (3) Eliminate artificial, anti-consumer rewards to operators for the substitution of high fee services for low fee services;

- (4) Resist enforcement guidelines that would encourage migration of advertiser-supported services to a la carte distribution from the broad tiers upon which their economics depend;
- (5) Limit the scope of review for complaints triggered by programming and other external cost increases to the reasonableness of the increase at issue, not the entire rate structure; and
- (6) Eliminate overbroad review and needless delay in operators' recovery of external cost increases on the basic tier.

Lifetime believes that these modifications are critical to the Commission's efforts to promote real, even-handed marketplace incentives for initial investment in new services and continued investment in existing cable programming.

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COMMENTS OF LIFETIME TELEVISION

Lifetime Television ("Lifetime") hereby submits comments, pursuant to Sections 1.415 and 1.419 of the Commission's rules, in response to the Commission's Fifth Notice of Proposed Rulemaking regarding the need to restore greater programming incentives for cable operators.¹ Lifetime firmly supports Commission efforts to foster significant incentives -- constructive and even-handed incentives -- for operator investment in quality programming. The existing scheme, however, has created incentives that are neither constructive nor even-handed. Indeed, as set forth below, the Commission's current rules pose a direct threat to the economic viability of Lifetime and other established low

¹ Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 -- Rate Regulation, MM Docket No. 92-266, FCC 94-48 (Mar. 30, 1994) ("Fifth NPRM" or "Second Order on Reconsideration"). The Fifth NPRM was released as part of the Commission's Second Order on Reconsideration and Fourth Report and Order in the same docket.

fee, high quality program services like it, and the rules should be modified accordingly.

I. THE CURRENT RATE REGULATION REGIME UNDERMINES THE ECONOMICS OF ADVERTISER-SUPPORTED PROGRAM SERVICES THAT PROVIDE CONSUMERS HIGH VALUE AT LOW FEES

Lifetime's experience reveals the risks to advertiser-supported program services -- and, in turn, to the American viewing public -- posed by rate regulations that fail to reward, and indeed discourage, broad tier carriage of such low fee, high value services.

A. Lifetime's Broad-based Distribution Is The Key To Its Affordable, Quality Service

As an independent cable network in which no cable operator holds an ownership interest,² Lifetime enjoys none of the benefits of assured access and financial support inherent in vertically integrated operator-programmer relationships. As its tremendous audience growth has nonetheless demonstrated, Lifetime -- as a 24-hour basic cable network that presents contemporary, innovative entertainment and information programming of particular

² The network is a joint venture of The Hearst Corporation and Capital Cities/ABC Video Enterprises, Inc., a wholly owned subsidiary of Capital Cities/ABC, Inc. A former partner in the venture with some cable system holdings, Viacom International, Inc., divested its interest in Lifetime in March 1994.

interest to women -- does indeed fill a distinct need.³ Established in 1984, Lifetime's reach has expanded from 17 million homes initially to approximately 59 million homes today.

Lifetime is able to reach and serve so many viewers across the country precisely because it is a relatively inexpensive, advertiser-based service. Indeed, since its inception, Lifetime has been one of the least expensive program services available to cable operators.⁴ Approximately 70% of Lifetime's revenues come from advertising,

³ Committed to providing quality programming that performs a valuable service for its target audience, Lifetime has earned more than 200 awards and award nominations in the decade since its inception. Lifetime has a history of successful public service campaigns focusing on women, such as "Women in Politics" and "Your Family Matters." The network's 1994 campaign, "Picture What Women Do," was produced in cooperation with a broad spectrum of women's service organizations, such as the YWCA, the PTA and the Junior League, to celebrate the extraordinary and everyday accomplishments of women. Lifetime's total programming investment has grown more than tenfold since 1984, with a still-rising percentage of investment dedicated to developing original programs. Just since 1990, Lifetime has increased its programming investment by 89%.

⁴ Like many program services which began in the early 1980s, Lifetime initially was made available without charge to cable operators. In fact, Lifetime was one of the last in that early group to charge operators license fees, and today it remains one of the least expensive program services.

while the remainder is derived from license fees paid by operators.⁵

Lifetime's substantial advertising revenue base, in turn, depends squarely upon its ability to deliver advertisers a "critical mass" of targeted viewers. To date, Lifetime has done just that. Reaching 93% percent of all cable homes with its quality programming, Lifetime ranks sixth in prime time and tenth in total day ratings among cable program services.⁶ And those numbers, of course, represent an important audience which many advertisers eagerly seek, but otherwise find elusive -- namely, women.⁷

Lifetime's resulting low cost to operators, and its attractive demographics for local advertising sales, have created a very favorable cost-value ratio for the service in the eyes of cable operators, who are able to offer Lifetime very inexpensively to subscribers through widely distributed tiers. Until recent times, that ratio has helped Lifetime maintain its carriage levels on widely subscribed basic or

⁵ Lifetime, like most advertiser-supported "basic" program services, spends a substantial majority of its net advertising revenues on programming. See Paul Kagan Associates, Inc., Cable TV Programming, Mar. 22, 1993, at 1.

⁶ Despite these strong ratings, Lifetime has been unable to negotiate more favorable channel positioning on many cable systems, which research suggests further enhances a programmer's viewership and popularity.

⁷ Lifetime delivers among the highest concentration of women viewers of any broadcast or cable program service.

expanded basic tiers and, indeed, dispel the myth that a low cost service means a low quality service.

The service that Lifetime and other low fee advertiser-supported services like it provide to the American viewing public thus flourishes because this chain of interdependent factors stands unbroken: quality programming, broad distribution, low license fees, widely-subscribed tier carriage, strong ratings, solid advertising support, and, coming around again, still higher quality programming. When one link is broken, however, the others weaken as well, and economic viability is lost. This is the real threat the current cable rate regulation scheme has come to pose for existing low fee services, as explained below.

B. Current Rate Regulations Create Substantial Pressure To Migrate Low fee, Advertiser-Supported Services Off The Broad Tiers Upon Which Their Economic Viability Depends

Lifetime submits that the 1992 Cable Act and the Commission's implementing regulations, as they now stand, erode the economics of broad-based, advertiser-supported program services. Systematic migration of networks such as Lifetime from a widely available regulated tier to a far more narrowly distributed level of service -- or, worse still, regulation-inspired deletion of Lifetime -- would cripple this broad distribution and thus break the economic chain

that has made innovative, high-quality programming available at little cost to subscribers.

Inherent in the 1992 Cable Act are two underlying forces that have unintentionally endangered the continued broad tier carriage of advertiser-supported cable programming networks such as Lifetime:

A La Carte's Unregulated Status. Services offered outside of the regulated tier are, first and foremost, exempt from rate controls, enticing operators to offset rollbacks in regulated services and restore pre-regulation margins by moving established programming services off regulated tier line-ups and into individual or collective a la carte offerings.

The Must Carry/Retransmission Consent Squeeze Play. The Cable Act's mandatory carriage and retransmission consent provisions, meanwhile, have put a "double squeeze" on channel availability. The effect of "must carry" is obvious enough -- with more channel space required to be devoted to broadcast service, less room remains for cable programming networks.⁸ But retransmission consent negotiations have created even greater shortages of "shelf space" for cable programming services: to win carriage consents from powerful

⁸ This "must carry" regime is not going away anytime soon, moreover, given the protracted proceedings sure to follow the recent Supreme Court remand. Turner Broadcasting System, Inc. v. F.C.C., Dkt. No. 93-44 (U.S. June 27, 1994).

local broadcasters, cable operators have been required to earmark substantial amounts of channel space and program budgets for new, broadcaster-backed programming services.⁹

The Commission's implementing rules, moreover, have exacerbated, rather than mitigated, this squeeze on the ability of cable programmers to maintain broad tier carriage. Indeed, in a most consumer-unfriendly twist, the current going-forward rules create the greatest barriers to broad tier carriage for cable networks with the lowest license fees. Specifically, strong incentives have been created for operators to remove low fee services from broad tiers, replace them with high fee services, and then migrate the low fee services to the unwelcoming land of a la carte.

The "Switch Out" Incentive. This perverse development is rooted in both the skewed nature of the current going-forward methodology and in the cash flow nature of the cable business. FCC officials appear to have frankly acknowledged the sense of the marketplace that a 7.5% mark-up, coupled with a minimal "network cost" adjustment for channel additions, simply does not suffice. The typically one or two penny "network cost" adjustment provides a wholly inadequate incentive for adding new services by increasing channel

⁹ On a separate but closely related issue, Lifetime strongly encourages the Commission to address this significant channel capacity dilemma directly by broadly interpreting its rules allowing operators to recover the costs of system upgrades in a prompt, full fashion.

capacity. Higher fee services can be added in another, far more margin-enhancing way, however. By substituting high fee services for low fee services such as Lifetime, an operator can pocket a 7.5% mark-up on the license fee differential between Lifetime and the higher priced service.¹⁰ Many operators are tempted to do just that, thereby maximizing revenues and cash flow available for paying down debt, upgrading plant, or simply enhancing the bottom line. Operators have already made plain just how real this incentive is,¹¹ as Lifetime knows too well.

¹⁰ For example, with the current 7.5% mark-up, an operator would be permitted a mark-up of only \$0.01125 on a channel with a 15-cent license fee, while the operator could obtain a \$0.045 mark-up were it to substitute a channel with a 60-cent license fee -- resulting in a greater than three-cent profit differential per subscriber.

¹¹ See, e.g., Response of Continental Cablevision, Inc., to Petitions for Reconsideration, MM Docket No. 92-266 (June 16, 1994). Continental explained that "the incentives work against improving programming offerings. . . . Every operator in major markets, serving the vast majority of the population, is strongly motivated to drop low cost networks from regulated tiers and replace them with premium channels." Id. at 7.

The Commission surely did not intend, or even contemplate, this "switch-out" incentive when it developed its going-forward rules. Nevertheless, the FCC has, in fact, spurred the trend with its recent "fX" ruling. Intent on sparing subscribers an imputed rate increase through the deletion of higher fee services, the Cable Services Bureau essentially directed operators to displace lower fee services if they wished to substitute newly launched services onto regulated tiers without jeopardizing their two-month deferral of refund liability. See Letters from Alexandra Wilson, Acting Chief, Cable Services Bureau, to Robert Corn-Revere, Esq. (released April 14, 1994, and April 19, 1994)

(continued...)

The likely targets for such migration, moreover, are not the least popular program services, but rather the more popular low fee program networks such as Lifetime. It is precisely these services which operators are tempted to "switch out" to an a la carte position -- and to employ as the anchor for a new "a la carte package" of program services -- in the hope that at least some devoted viewers are likely to pay significant additional sums to maintain access to their favorite programming. Yet even these dedicated viewers inevitably end up paying far more for less as, with the inevitable loss of distribution, the chain is broken as the economics of advertiser support erode and less money is available for programming investment.

C. Loss of Distribution Has A Compounding, Corrosive Effect on The Viability of Low fee, Advertiser-Supported Services Like Lifetime

As a consequence of the regulatory forces described above, Lifetime has already been dropped from some cable systems and, indeed, is currently threatened with further loss of cable carriage. This growing loss in revenue is unprecedented, and potentially devastating, for Lifetime.

Viewers are lost, however, not only when regulation results in Lifetime being dropped altogether from cable

¹¹(...continued)
(clarifying the impact of 47 C.F.R. § 76.922(6)(B) on the June 1, 1994, launch of fX).

systems, but also when regulation drives operators to migrate services off of broadly-distributed regulated tiers. Even a relatively small loss of subscribers resulting from a displacement from regulated tiers nationwide translates into a loss of revenues at a geometric rate. A Paul Kagan study indicates that even if retiering creates just a 10% reduction in subscribers, a programmer's cash flow may drop by as much as 66% -- while a 25% drop theoretically could wipe out any cash flow and actually create a loss.¹² The consequences of such a retiering impact are evident: a cable network would either substantially cut back on its programming budget or it would go out of business.

The causal chain of events leading inexorably to this subscriber harm is, unfortunately, quite simple and direct. Unlike many of the new, niche services whose business plans have always contemplated an a la carte strategy, a more broad-based advertiser-supported program service relegated to a la carte status will inevitably see its audience size dwindle. Given the Commission's affirmative marketing rules, an a la carte Lifetime service will plummet from its near universal reach to zero penetration. Consumers must then

¹² Kagan, supra note 5, at 1-2. See also Paul Kagan Associates, Inc., Deregulation A Dark Cloud Over Programmers, Cable TV Programming, May 23, 1994, at 4 (discussing "chaos and inaction" with the cable programming industry); Paul Kagan Associates, Inc., Cable TV Regulation, May 31, 1994, at 1 (discussing adverse consequences facing new services).

take positive steps to subscribe to the channel -- at substantially greater cost, as explained below. Even among frequent viewers of Lifetime and most other advertising supported services, however, less than 10 percent express any willingness to pay, for example, a \$3 fee for obtaining such service.¹³ Indeed, approximately 60% of basic cable viewers indicate that they would not pay any price for programming channels they regularly watch if such channels were offered only on a stand-alone basis.¹⁴ Furthermore, the program service loses all those viewers -- two-thirds of Lifetime's typical audience -- who tune in to its programming while "grazing" throughout their available channel line-up. These hardships are further compounded by the fact that the program service must continue to compete with services which are still carried on the broadly distributed tiers. With both its audience reach and its audience share thus slashed, the a la carte program service's ratings and advertising revenues fall in turn.

¹³ Beta Research, Cable Industry Study, October 1992.

¹⁴ Id. In the few tests which have been done, the average penetration of cable channels in an a la carte environment is below 10%. "Panelists At NCTA Say A La Carte Will Limit New Cable Channel Launches," Communications Daily, May 25, 1994, at 6. One operator who devoted considerable marketing resources to selling an a la carte tier of five strong channels at \$2.95 per month achieved only 18% penetration. Id. Surveys conducted by Warren Publishing indicate that, even among subscribers theoretically willing to pay extra for a la carte channels, most would reject a la carte if the price per channel reached \$1.50 per month. Id.

At the same time, a broad-based program service shunted to a la carte must come up with revenue to dramatically boost its direct marketing and promotion efforts. To combat its shrinking audience size, the programmer must expand and shift its marketing efforts away from mass media advertising aimed at getting existing subscribers to tune in. Instead, it must undertake costly direct marketing efforts aimed at getting lost viewers to make the affirmative election to subscribe and thus become at least a potential viewer once more.

Just to offset the loss in both advertising revenues and license fees, the programmer must then charge operators (who in turn will pass such costs through to subscribers) many times more for each a la carte subscriber -- if operators even permit the programmer to increase its license fees. To compensate for the jump in its marketing costs, as well, the programmer would likely have to reduce its investment in the quality of its programming fare. In short, many would-be viewers would be completely precluded from watching the service unless they affirmatively elect to receive it, while the service's remaining viewers likely end up paying multiple dollars to get less of the desirable programming they once received at little expense.

**II. THE COMMISSION SHOULD NEUTRALIZE THE DISCRIMINATORY
IMPACT OF RATE REGULATION ON THE CONTINUED TIER CARRIAGE
OF Low fee, ADVERTISER-SUPPORTED SERVICES**

**A. Enhanced Incentives For Adding Channels Should Not
Artificially Induce Operators To Switch Out
Existing Low fee Services**

The incentives for cable operator investment in added program services should indeed be enhanced, but in a neutral fashion that encourages operators' carriage decisions to be based on programming quality and audience demand instead of the financial impact of regulatory constraints. Regulations should not turn on whether the program service is long established or a newcomer to the market, on how much the service costs operators to transmit, or on the economic or marketing foundation of the service. In particular, the rules seeking to promote the addition of programming services should eliminate existing artificial incentives to drop or switch out established low fee program networks for high-fee services.¹⁵

As a threshold matter, the new, enhanced incentives for adding channels should apply only where an operator has truly added a program service to the total number of channel slots

¹⁵ Indeed, with the must carry/retransmission consent "double squeeze" on channel capacity in particular, the Commission should take extra care to ensure fair treatment for independent program services. The revised methodology should promote investment in both new and existing program services on a neutral basis.

on regulated tiers. Merely switching out a low fee service for a high-priced service should not entitle the operator to earn a flat-fee or other "channel addition" return. The Commission's external cost recovery mechanism should, moreover, ensure that veiled switch-outs do not escape regulatory recognition by, for example, being staggered in time. The Commission must continue, at a minimum, to apply its mark-up symmetrically to any deletions of services from a regulated tier.

The Commission should then provide adequate incentives for the channel additions that do not inadvertently favor carriage of higher fee services. The FCC now has several intriguing ideas before it, including various "flat fee" or "average margin" approaches, which would provide the same absolute mark-up regardless of the characteristics of the added programming service. The stated goal, and apparent effect, of these proposals is to avoid favoring one programming service over another.¹⁶ Lifetime wholeheartedly supports this goal and therefore urges the Commission to provide operators with a flat-fee mark-up, which could be reasonably derived through the average margin approach, in order to allow true additions to a regulated tier.

¹⁶ The return on true channel additions should, of course, not so greatly exceed the return on investment in already carried services so as to discourage continued support for investment in established services.

B. The Commission Should Provide A Minimum Mark-Up on License Fee Increases

Lifetime believes that a substantially increased minimum mark-up for license fee increases offers an appropriate, much-needed remedy for the inadequacy of the current trivial return for already carried low fee services. Continuing to apply a percentage approach as the sole methodology would perpetuate operators' current regulation-inspired disincentives to continue to carry low fee services on broadly subscribed tiers.

A minimum mark-up amount on license fee increases would ameliorate existing disincentives and, in fact, provide needed support for established program services seeking to expand and improve their programming fare. This minimum mark-up could be derived on a basis similar to that for any flat-fee approach the Commission adopts for marking up the cost of newly added channels.

Should the Commission deem it necessary, furthermore, it could impose a reasonable annual cap on the total amount of mark-up which may be recovered. In no event, however, should a cap be imposed on the pass-through of license fees, as distinguished from a cap that might be imposed on the permitted mark-up on those fees. The Commission has long made clear that all programming costs should be fully recovered on an external cost basis, and no cap should be

allowed to frustrate this fundamental tenet of the Commission's benchmark/price cap approach.

C. The Commission Should Seek to Mitigate, Not Codify, Artificial Incentives for Migration

Given the threat that an artificially inspired a la carting trend poses for widely distributed, advertiser-based services, Lifetime would oppose any proposal that would create or perpetuate incentives for such migration. The Commission should reject suggestions that operators be automatically permitted to move, prospectively or on a "grandfathered" basis, a fixed number of programming services to unregulated carriage. It is not enough even to condition such proposals on the consent of the services being retiered. Programmers are too dependent on good customer relationships with cable operators to be able to easily resist pressure and deny an operator's request that they permit migration to an unregulated package, and programmers not vertically integrated with operators have even less leverage.

Issues regarding the propriety of a la carte changes are fact-specific in nature. Therefore, the Commission's case-by-case approach is generally the most appropriate method for dealing with individual disputes over migration of program services from a regulated tier to a la carte treatment. The agency should thus retain its vigorous, ad hoc oversight

procedures to address this problem, rather than create broad inducements for further migration.

Far from encouraging more movement toward a la carte treatment, the Commission should instead act to support cable operators who would like to return programming networks back to widely distributed basic or enhanced basic tiers.¹⁷

Lifetime urges the Commission to develop procedures to smooth the path for a return of program services back from a la carte carriage to their original status on a regulated tier.¹⁸

III. THE COMMISSION SHOULD RECOGNIZE THE CRITICAL IMPACT OF CERTAIN PROCEDURAL ISSUES ON PROGRAMMING INVESTMENT

Lifetime also urges the Commission to address two rate regulation procedural issues which may have been viewed thus far as essentially only cable operator problems. As

¹⁷ Uncertainty has kept some operators from undoing a la carte packages created in the early days of implementation of the 1992 Cable Act, but which they fear might not pass muster under the Commission's expanded criteria for judging evasive migration.

¹⁸ The Commission should make clear that returning program services to regulated tiers would not be deemed an indication of culpability under the Commission's initial pronouncements on a la carte packages. The Commission should also clarify that the negative option rule does not stand as a barrier to the reverse migration of a reasonable number of program services. Operators also need guidance as to how the various benchmark methodologies would provide for recovery of costs and margins for such program services upon their return to a regulated tier.

demonstrated below, however, these matters raise serious implications for programmers as well.

A. Program Investment Will Suffer If An Operator's Entire Rate Structure Is Placed At Risk Whenever Programming Costs Increase

The Commission's determination regarding the scope of review triggered by rate complaints poses a considerable threat to increased programming investment and the fair recovery of all external cost pass-throughs. Although the 1992 Cable Act requires that complaints be filed within a "reasonable period" after a rate increase,¹⁹ the Commission has ruled that any change in rates accompanying programming cost increases subjects the operator to complaints that could end up prospectively reducing its entire rate structure -- not simply the amount of the increase.²⁰

Lifetime respectfully suggests that this determination is contrary to the text and the legislative history of the Act.²¹ Furthermore, from a policy perspective, the

¹⁹ 47 U.S.C. § 543(c)(3).

²⁰ Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 - Rate Regulation, 8 FCC Rcd 5631, 5866 n.907 (1993) ("Rate Order").

²¹ With the exception of the 180-day period following the effective date of rate regulation -- a period which expired on February 28, 1994 -- complaints directed at a rate increase must be filed within 45 days of receipt of the first bill reflecting the increase. 47 C.F.R. § 76.953(b). Nevertheless, the Commission's rules now provide for the

(continued...)

Commission's determination erects a major impediment to increased investment in the programming offered to subscribers. When programmer fee increases could ignite a full-blown review of the cable operator's rates, the operator naturally will be deterred from supporting improvements in existing services through increased license fees support.

The Commission can solve this problem by modifying its rules regarding the scope of rate reviews undertaken because of complaints. It should be made clear that rate complaints filed after February 28, 1994 should be reviewed only with respect to the reasonableness of the increase that opened the system's rates for review.

**B. Needless Delay In Operators' Recovery Of Basic Tier
 External Cost Increases Will Retard Program
 Investment**

New ground rules for cable operators' pass-throughs of external costs to subscribers create a needless delay in the recovery of increased external costs on the basic tier.²²

²¹(...continued)
reopening of the otherwise closed window for rate complaints at essentially any time, so long as a rate increase provides the proper excuse for review. This result cannot be deemed to accord with the "reasonable period of time" for rate review established by Congress. Nor can operators be accused of somehow evading review of their overall rate structures, given that subscribers have had six months in which to lodge complaints concerning the rates in effect at the time rate regulation began.

²² See generally, Second Order on Reconsideration ¶¶
169-177.

Thus, cable operators will be forced to absorb the cost of new and improved programming while awaiting regulatory approval of a rate that recovers the cost -- a situation that frustrates the essential concept of a subscriber pass-throughs system.

The prospect of a significant regulatory lag is rooted in the interpretation of the rules requiring local franchising authority approval of all external cost increases.²³ While reasonable notification requirements at the local or federal level serve a legitimate purpose,²⁴ a broadly sweeping obligation to obtain franchising authority approval does not. If the local franchising authority then exercises its unbridled discretion to extend the 30-day deadline for approving the increase for an additional 90 days,²⁵ the operator's period of unrecovered costs may extend beyond 120 days.

As a preliminary step, the Commission should reconsider the Cable Services Bureau's decision that local approval, as opposed to notice, is required for proposed rate increases triggered by increased external costs -- costs the Commission originally envisioned costs as being "automatically passed-

²³ Cable operators currently are required to file.

²⁴ Form 1210 must be filed with the local authority at least 30 days before raising rates to cover increased external costs.

²⁵ See 47 C.F.R. § 76.933.